

TRANSMITTAL OF APPEAL BRIEFDocket No.
GGG-10402/29

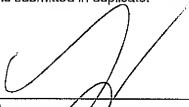
In re Application of: G. Gochanour

Application No.
10/686,298-Conf. #7109Filing Date
October 15, 2003Examiner
L. BreanGroup Art Unit
3724

Invention: DISPENSER FOR FLEXIBLE THIN-FILM HAND COVERINGS

TO THE COMMISSIONER OF PATENTS:Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of: Gochanour

Serial No.: 10/686,298

Group No.: 3724

Filed: Oct. 15, 2003

Examiner: Laura Michelle Lee

For: DISPENSER FOR FLEXIBLE THIN-FILM HAND COVERINGS

APPELLANT'S BRIEF UNDER 37 CFR §41.37

Mail Stop Appeal Brief
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I. Real Party in Interest

The real party and interest in this case is G. Gary Gochanour, Applicant and Appellant.

II. Related Appeals and Interferences

There are no appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims

The present application was filed with 12 claims. Claims 2-3 and 8-9 have been canceled. Claims 1, 4-7 and 10-12 are pending, rejected and under appeal. Claims 1 and 7 are the independent claims.

**IV. Status of Amendments Filed Subsequent
Final Rejection**

An after-final response was filed June 4, 2007. A further after-final amendment is being filed herewith correcting the specification on pages 7, 8 and 9, as requested by the Examiner in the final

Office Action. Additionally, claim 7 has been amended to overcome the Examiner's objection regarding "the housing."

V. Summary of Claimed Subject Matter

Independent claim 1 is directed to a dispenser 100 for a hand covering. The dispenser comprises a housing to receive a roll of thin, flexible film 102 having opposing side edges to be used as the hand covering. A form 114 is configured to be grasped by a user through the film 108 such that the film temporarily clings to the user's hand. A set of interlocking chains or opposing belts on either side of the housing 110, 112, 110'112' retain the side edges of the film as it moves through the dispenser for each use. (See Specification, page 5, line 26 to page 6, line 28; Figures 1, 4 and 5).

Independent claim 7 is directed to a dispenser 100, comprising a roll of thin, flexible film 102 having opposing side edges and an adhesive surface to be used as a hand covering. A form 114 is configured to be grasped by a user through the film 108 with the adhesive surface facing outwardly, such that the film temporarily adheres to the user's hand. A set of interlocking chains or opposing belts on either side of the housing 110, 112, 110'112' retain the side edges of the film as it moves through the dispenser for each use. (See Specification, page 5, line 26 to page 6, line 28; Figures 1, 4 and 5).

VI. Grounds of Objection/Rejection To Be Reviewed On Appeal

A. The rejection of claims 1 and 4-6, wherein claims 4-6 stand/fall with claim 1, and wherein claims 1, 5 and 6 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,773,532 to Stephenson, and claim 4 stands rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 64,773,532 to Stephenson in view of U.S. Publication No. 2002/0073821 to Broehl.

B. The rejection of claims 7 and 10-12, wherein claims 10-12 stand/fall with claim 7, and wherein claims 7 and 10-12¹ stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,773,532 to Stephenson, and claim 10 further stands rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 64,773,532 to Stephenson in view of U.S. Publication No. 2002/0073821 to Broehl.

¹ In the final Office Action, page 5, Appellant is unsure of the Examiner's reference to "Henderson" regarding claim 12.

VII. Argument

- A. Claims 1 and 4-6, wherein claims 4-6 stand/fall with claim 1.

The Examiner's Interpretation of Appellant's "Set of Interlocking Chains" is Unreasonable.

Claim 1 includes the limitation of "a set of interlocking chains or opposing belts" that retain the side edges of a film as it moves through a dispenser for each use as a hand covering. Claim 1 stands rejected under 35 U.S.C. §102(b) over U.S. Patent No. 4,773,532 to Stephenson. In Stephenson, a toothed sprocket wheel 16 associated with crank 15 engages a series of perforations 17 in backing sheet 10 ('532 Patent, 2:50-52), as shown in Figure 1 of the Stephenson patent, reproduced below:

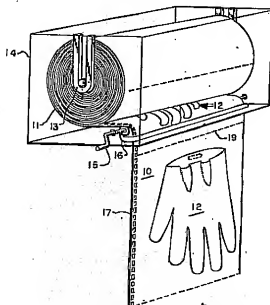


fig. 1

The Examiner argues that this series of perforations reads on "a set of interlocking chains" because a row of holes in a piece of paper can be considered a "chain" of perforations. In support of this argument, the Examiner introduced two new references in an after-Final Advisory Action mailed June 19, 2007. These references, Engelhardt *et al.* (U.S. Patent No. 4,112,761) and Fisher *et al.* (U.S. Patent No. 5,988,882) were not combined with Stephenson as part of an obviousness rejection, nor were they cited in an IDS. Rather, the Examiner relies upon these references as "authorities" which stand for the proposition that "one with ordinary skill in the art would have understood the series of perforations

to have comprised a ‘chain’ of perforations.” (*See* Advisory Action.)

This argument is insufficient on several grounds. First, regardless of what they are called, a row of perforations—even a “chain” of perforations—does not constitute “a set of interlocking chains.” It is irrelevant whether one with ordinary skill in the art would have understood that a series of perforations in a piece of paper could be called a “chain” when any reasonable individual would appreciate that “a chain” is generally thought of as “a series of connected links, usually made of metal.” (*See* Wikipedia.)

Moreover, a “set” of “chains” means there are two (or more) “chains” and, since the word “chains” is pluralized, presumably the chains are the same (which they are according to Appellant’s specification, but for their length). With regard for the need that the chains be “interlocked,” the Examiner notes “that as the material that surrounds the perforations [of Stephenson] is integral in the structural makeup of the perforation, and is shared by the preceding and subsequent perforation, consequently, the perforations are integrally locked together.” (Final OA, page 2) Not only is this logic circuitous, unconventional, and formulated only for the purposes of rejection, Appellant notes that if applied, the Examiner’s definition would have to mean that each hole in the backing paper of Stephenson has to be considered a “chain”—otherwise, how could a “chain of perforations” be “a set of interlocking chains”? The answer, of course, is that it cannot.

The Examiner’s argument is also flawed on the grounds that if “set of interlocking chains” is not understood, Appellant’s specification should be consulted, not arbitrary third-party patents. “Claim interpretation must be consistent with the specification.” *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). The written description must be examined in every case, because it is relevant not only to aid in the claim construction analysis, but also to determine if the presumption of ordinary and customary meaning is rebutted. *See Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1250, 48 USPQ2d 1117, 1122 (Fed. Cir. 1988). The presumption will be overcome where the patentee, acting as his or her own lexicographer, has clearly set forth a definition of the term different from its ordinary and customary meaning. *See In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994); *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1387-88, 21 USPQ2d 1383, 1386 (Fed. Cir. 1992). The presumption also will be rebutted if the inventor has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope. *See Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299

F.3d 1313, 1324, 63 USPQ2d 1374, 1380 (Fed. Cir. 2002).

If the Examiner had consulted Appellant's specification, the Examiner would have been made aware that Figure 5A "shows schematically how the edge of film 500 is trapped by interlocking chains 502, 504." (Specification, page 6, lines 11-13). Appellant's Figure 5A is also reproduced below:

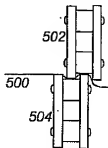


Fig - 5A

This structure is clearly different than a piece of paper with perforations along its side. For this reason alone, *prima facie* anticipation has not been established.

Stephenson Does Not Teach "A Form Configured to be Grasped by a User Through the Film"

Appellant's claim 1 includes the limitation of "a form configured to be grasped by a user through the film such that the film temporarily clings to the user's hand." This is shown in Figure 1 of the subject Application, reproduced below:

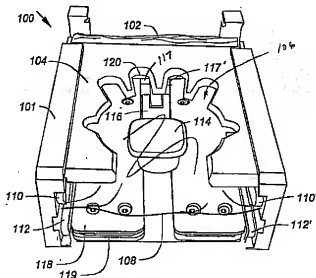


Fig - 1

The “form” is shown at 114, which a user grabs through the 108 which overlies the form 114. (Incidentally, the two sets of interlocking chains are shown at 110, 112 and 110’ and 112’). The Examiner’s argument is that “a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.” The Examiner is misguided. Appellant’s positive recitation of “a form” is a structural limitation and not merely “intended use.” The Examiner’s argument is that the structure of Stephenson is capable of performing the intended use because “Stephenson discloses ... a form (glove, 12) configured to be grasped by a user through the film (by inserting their hand in the glove) such that the film temporarily clings to the user’s hand.” (Final OA, pp. 4-5).

This reasoning is problematic for several reasons. First and foremost, the Examiner also states that “Stephenson discloses ... a roll of thin, flexible film (roll, 11) having opposing side edges to be used as a hand covering (glove).” (Final OA, pp. 4-5) In Appellant’s claim, the “roll of thin, flexible film having opposing side edges to be used as a hand covering” and “a form configured to be grasped by a user through the film” *are separate elements*. According to the Examiner the glove of Stephenson is *both* the hand covering and the form. That being the case, Stephenson is clearly missing one of Appellant’s elements, thereby defeating anticipation. Anticipation may be established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. *RCA Corp. v. Applied Digital Data Systems*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

Stephenson Does Not Teach a Set of Interlocking Chains to Retain Both Side Edges of a Film, Which is the Only Way Appellant’s Claim 1 Can be Interpreted.

Interpreted correctly, Appellant’s claim 1 clearly requires two sets of interlocking chains, one on one side of the housing, and a second set on the other side of the housing. First, the claim recites “a housing to receive a roll of thin, flexible film *having opposing side edges...*” Thus, the film has two side edges. With this foundation, the claim recites “a set of interlocking chains or opposing belts on either side of the housing *to retain the side edges* of the film...” The only way that “the side edges (plural) of the film could be retained is to interpret “chains ... on either side of the housing” to mean

“chains ... on both side of the housing,” which, incidentally, is fully supported by Appellant’s specification.

The Examiner’s argument that “Applicant has admitted in their response (see page 4, lines 3-4) that the limitation is broad enough to read on “one, the other, or both” is inaccurate, out-of-context and misleading. The passage quoted by the Examiner actually reads as follows: “[w]hile it is conceded that the word “either” can, at various times, be interpreted as one, the other, or “both,” in this case, “either” clearly means *on both sides of the film*. The perforations 17 of Stephenson are only on one side.” (Emphasis in original).

With regard to the rejection of claim 4 under 35 U.S.C. §103(a), it is Appellant’s position that since the primary reference of Stephenson does not disclose each and every element of claim 1, the proposed Stephenson/Broehl combination would not recite all of Appellant’s claim limitations, thereby defeating *prima facie* obviousness.

B. Claims 7 and 10-12, where claims 10-12 stand/fall with claim 7.

In addition to the arguments made with respect to claim 1, above,

Stephenson Does Not Teach a Roll of Thin, Flexible Film Having Opposing Side Edges and an Adhesive Surface to be Used as a Hand Covering

Claim 7 positively recites “a roll of thin, flexible film having opposing side edges and an adhesive surface to be used as a hand covering.” In response to Appellant’s contention that Stephenson fails to teach such a limitation, the Examiner argues that “a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The argument that Stephenson’s film (backing sheet) is thrown away and is not used as a hand covering is not persuasive as it is still capable of being used as a hand covering.” (See Advisory Action, p.2)

First, “a roll of thin, flexible film having opposing side edges and an adhesive surface” is not merely “intended use.” Second, “an adhesive surface” means just that: a surface with an adhesive on it, something which Stephenson does not have because the “adhesive is “used up” as described below. Thus, to the extent that Stephenson even has a thin, flexible film that “could be” used as a hand

covering, the reference clearly does not disclose or suggest a thin, flexible film having an *adhesive surface* to be used as a hand covering.

**Stephenson Does Not Disclose an Adhesive Film Facing Outwardly
Such That the Film Temporarily Adheres to the User's Hand**

In response to Appellant's contention that Stephenson does not disclose an adhesive film facing outwardly such that the film temporarily adheres to the user's hand, it is noted by the Examiner that Stephenson does disclose an adhesive film (26). However, item (26) of Stephenson are "[p]rojecting means, in the form of paired pleats ... associated with the palm side of cuff portion 22." ('532 Patent; 3:11-12) Even if the Examiner meant *item 25* of Stephenson, this is a small square of glue, best seen in Figure 4 of the '532 Patent:

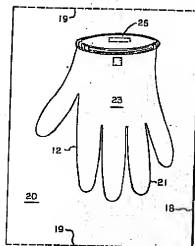


fig. 4

The small square of adhesive to which the Examiner refers is "used up" through the attachment of each glove to the backing sheet. As such, Stephenson does not teach or suggest "an adhesive film."

Claim 7 further includes the limitation of "a form configured to be grasped by a user through the film with the adhesive surface facing outwardly such that the film temporarily adheres to the user's hand." The Examiner's argument here is that "[i]n as much as there are no limitations defining the "outwardly" direction, relative to another direction, the Stephenson adhesive faces outwardly away from the backing sheet (10)." Appellant believes the Examiner misses the point. To have an adhesive

“facing outwardly” in *any direction* the adhesive must be “available” for contact which in the case of Stephenson, it is not. Second, it should be clear from the claim that the adhesive also faces outwardly and away *from the form configured to be grasped by a user* through the film; otherwise the film would just stick to the form. Since the Examiner has previously stated that “the form” of Stephenson is the glove itself, the adhesive of Stephenson must therefore *face toward* the form configured to be grasped by a user, which indeed it does; in fact the glove is attached to the backing sheet of Stephenson using that adhesive.

With regard to the rejection of claim 10 under 35 U.S.C. §103(a), it is Appellant’s position that since the primary reference of Stephenson does not disclose each and every element of claim 7, the proposed Stephenson/Broehl combination would not recite all of Appellant’s claim limitations, thereby defeating *prima facie* obviousness.

Conclusion

In conclusion, for the arguments of record and the reasons set forth above, all pending claims of the subject application continue to be in condition for allowance and Appellant seeks the Board’s concurrence at this time.

Respectfully submitted,

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Date: July 25, 2007

APPENDIX A

CLAIMS ON APPEAL

1. A dispenser for a hand covering, comprising:
a housing to receive a roll of thin, flexible film having opposing side edges to be used as a hand covering;
a form configured to be grasped by a user through the film such that the film temporarily clings to the user's hand; and
a set of interlocking chains or opposing belts on either side of the housing to retain the side edges of the film as it moves through the dispenser for each use.
4. The dispenser of claim 1, further including a cutter to cut the film into individual sheets.
5. The dispenser of claim 1, wherein:
the form is connected to a pull-down mechanism that lifts a portion of the housing during use;
and
the weight of the housing falling back into position is responsible for resetting the dispenser for the next use thereof.
6. The dispenser of claim 1, further including a hand-shaped opening to assist a user in grasping the form.
7. A dispenser, comprising:
a roll of thin, flexible film having opposing side edges and an adhesive surface to be used as a hand covering;
a form configured to be grasped by a user through the film with the adhesive surface facing outwardly such that the film temporarily adheres to the user's hand; and
a set of interlocking chains or opposing belts on either side of the housing to retain the side edges of the film as it moves through the dispenser for each use.

10. The dispenser of claim 7, further including a cutter to cut the film into individual sheets.
11. The dispenser of claim 7, wherein:
the form is connected to a pull-down mechanism that lifts a portion of the housing during use;
and
the weight of the housing falling back into position is responsible for resetting the dispenser for the next use thereof.
12. The dispenser of claim 7, further including a hand-shaped opening to assist a user in grasping the form.

APPENDIX B

EVIDENCE

None.

APPENDIX C

RELATED PROCEEDINGS

None.